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Supreme Court, U.S.
FILED

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No. _____ OFFICE OF THE CLERK

In the
SUPREME COURT OF THE UNITED STATES

MICHAEL SCHAEFER,

Petitioner

v.

LINDA H. LAMONE, Administrator,
State Board of Elections, State of Maryland,

Respondent

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether Maryland Code Ann., Election law, sec. 9-210(j)(3)(2002) which mandates alphabetical listing of candidates on public ballots violates Equal Protection provisions of the Fourteenth Amendment, United States Constitution?

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OPINION BELOW

The opinion of the court of appeals is unpublished (App., infra, 1). The opinion of the of the district court (App., infra, 2-7) is unreported.

JURISDICTION

The court of appeals entered its judgment on September 28, 2007 (App., infra, 1). The jurisdiction of this Court is invoked under 28 U.S.C. sec. 1254(1)

STATUTORY PROVISION INVOLVED

Section 9-210(j)(3) of the Maryland Election Law directs that "the names of candidates...shall be listed in alphabetical order by surname".

STATEMENT

Petitioner ("Schaefer") a down-alphabet-last-name candidate for the United States Senate, in a field of eighteen(18) men and women seeking to represent Maryland upon the retirement of Senator Paul Sarbanes in 2006, demanded that listing order of names on the ballot be randomized so that every candidate had an fair chance of being listed first, or last, the two most favored positions in some studies as to uninformed voters having a propensity to select the first acceptable name that they see at the top of the ballot, or seeing none, voting last name before they leave that section of the ballot. Respondent ("Lemone') refused, asserting the obligation of her office to proceed according to Maryland law.

Schaefer filed a complaint in the United States District Court, relief denied for reasons set forth is its Memorandum Opinion and subsequent Order as announced in its Opinion. (App., infr., 2-7).U.S. Court of Appeals affirmed . (App., 1).

A. Equal Protection

"No state shall..enforce any law which shall..deny to any person..the equal protection of the law". *14th Amendment, U. S. Constitution..*

This is nothing more than fundamental fairness, a level playing field, Judge Legg discussing the leading cases in this area of the law and lands on the side of the status quo in the face of new recognition of the rights of voters and candidates. He recognizes compelling decisions of state and federal courts that support eliminating Maryland from the some 15 states that still adhere to alphabetical listing of candidates, but supports arguments in favor of "voter convenience", "simplify vote counting", "voter confusion", and admits, at page 5, that 'restrictions on candidates affects voters".

The decision says that "candidacy is not a fundamental right", Tell that to candidates with a message, from Ross Perot to Ron Paul to Hillary and even George Wallace, as spokespeople of their times. We all have a right, and a duty, to promote and effect change, from writing letters to the Editor, to barnstorming our community as a candidate-advocate. Without question that is a right. States

are powerless to keep a convicted felon off the federal ballot, and should be powerless to continue to honor the Aaron Aardvarks who might seek public office over those with mid-late alphabet surnames.

It is sufficient at this point in the proceeding to invite the Court to review these cases, and precipitate a further analysis, perhaps with an Amicus brief joining the attack on tradition and the alphabet, when this petition is granted. They all hold that the alphabet is an unlawful tool to use in listing citizens seeking the public favor. *"A You're Adorable"* may be o.k. for a song, it is not o.k. as governing citizen relations as to ballot listing, or as to how petty cases are called in crowded public courtrooms. Citizens in a nomilitary assemblage have things to do, places to go, a right to pursue a busy life. We all have a right to be 1st. *Atkins v. Secretary of State*, , 904 A2d 702.; (N.H. 2006)

Gould v. Grubb, 14 C3d 661, 536 P2d 1337(1975)
Graves v. McElderry, 946 F. Supp. 1569(W.D. Okla. 1996)
Kautenburger v. Jackson, 333 P2d 293, 85 Az.128(1958)
Sangmeister v. Woodard, 565 F2d 460(7th Cir. 1977)
Alexander Hamilton, writing in the *Federalist Papers (No. 78)*, stated: "Whenever a particular statute contravenes the Constitution, it will be the duty of the judicial tribunals to adhere to the latter and disregard the former".

B. Proceedings Below

The Court of Appeals deferred to the studied and

comprehensive opinion of the trial court, the trial court balancing the equities, admitting that an ballot placement advantage may exist but that it does not rise to constitutional dimensions. But tips its hat to sister jurisdictions who have successfully found non-alphabet procedures.

The trial judge believes that only Election Commissions/Legislatures should deal with this issue, whereas Schaefer submits that it is the opportunity and obligation of our nation's highest court to determine that yes, there is a advantage to be first on a ballot, first in a phone book listing, first in line, as a matter of law, as reasonable men cannot differ as to there being an advantage.

Whether the advantage is great or small depends on many factors, whether the particular race is high-profile or low-profile, whether there are many or few candidates, whether there is adequate voter-education from candidates and/or the media, and whether there are distractions that take attention away from a given election---the terrorist attack on New York City took place on election day in many areas. And it is not this Court's province to weigh extent of the discrimination, being a "little bit pregnant" the situation still exists.

Whether the candidates names should be pulled out of a hat,or determined by order-of-filing, or 26 Keno-balls enlisted to shoot letters in random fashion, or perhaps balance the city treasury by auctioning-off first ballot position---these are issues for the states to deal with.

That the present system stinks, that it visits prejudice to every election in every community, in some amount is obvious from the inconsistency of states and courts and legislatures searching for the truth, but perhaps being burdened with other public crisis and issues that leave ballot position to mere academic debate, fiddling while Rome burns.

REASONS FOR GRANTING THE PETITION

A. The Trial Court's Interpretation, as adopted by the Circuit Court, Conflicts With Decisions of other Federal and State Courts and Aggravates the Split of Authority within the United States

The instant case finds alphabetical ballot listings constitutional, but federal decisions : *Graves v. McElderry*; *Sangmeister v. Woodard*, do not. And the latest determination by a State Supreme Court jettisoned the alphabet in favor of an alternative to be designed by the legislature, *Atkins v. Secretary of State*.

B. The Decision of the Court of Appeals Is Erroneous.

Given the importance of the issue, touching the lives of every voter and every candidate within the 4th District, and the dispute arising from the most fundamental document of our civilization, the decision should have been PUBLISHED. And Schaefer(and legal scholars and laymen alike) have a right to expect the Judges who affirmed to provide some insight into their thinking as to the basis issue, they all being mid-or-late alphabet surnames and

surely having some opinion on the fundamental fairness issue. The decision elevates "convenience" in voting and ballot counting over inherent fundamantal fairness to candidates and their supporters, and repudiates numerous other courts.

C. The Question Presented is Important

The nation's highest court has never ever examined the cause and effect of government use of the alphabet in conduct of its daily business.

And whether go looking for a specific name at ballot-time, or do they see "who's on the ballot" and what do they remember positive or negative about those listed? The voter-convenience theory holds that we all have our mind made-up before we go vote, and we might, as to Mayor, but as to the School Board members, the County Central Committee, the City Council, the House of Delegates, all low-profile candidacies--we are mostly uninformed about all the candidates---and for whatever name pops up.

We are entitled to vote for 'dumb reasons', like the first or last name on a laundry list of candidates. In 1960

A voter admitted she voted for Nixon over Kennedy because: "Vice President Nixon is already in Washington and able to quickly get to the White House in case of crisis, whereas Senator Kennedy is off somewhere in Massachusetts".

The Court cannot bring intelligence to the voters, The candidates and media do their best to do that:

but it is very important to have a legal playing field and force the ABC candidates of America to rise or fall on their own merits when contesting mid-late alphabet candidates.

Equal Protection means that no person or class of persons shall be denied same protection of the law which is enjoyed by other persons or other classes in the same place and under like circumstances. *Supermarkets General Corp. v. State*, 409 A2d 250, 286 Md. 611(1979).

And least one Supreme Court Justice(Ca.) has found the 'advantage' to be an issue of law. Justice Tobriner, dissenting in *Mexican American Pol. Assn. v. Brown*, 8 C3d 733, 735; 505 P2d 204 (1973) stated: "When general elections are viewed, with more public education and focus, there is reasonable dispute as to the advantage, whether it exists and to what extent. Thus this Court could find that ballot-position advantage in elections involving multiple candidates exists, as a ***matter of law***, as to primary elections". (emphasis added)

The alphabet may be o.k. for taking roll in class or the military, or listing obituaries in the press, but in crowded small claims and traffic courts involving brief hearings, Aaron Aardvark's case is called first and he leaves within minutes of the Judge taking the bench with Zelda Zumwalt having to sit through two hours of brief hearings to have her say is rank discrimination.

Once this court recognizes that the alphabet can be a bitter-enemy, festering with prejudice toward all

with middle-and-late alphabetical names, perhaps America's courts will discovery
a way to call cases in the people's courts on a random basis. The reform in America has to start here, and few if any voters or candidates can afford to bring this issue where it is today. It is common to every state, and the inconsistencies in a society where people move freely, many have two homes, and are encouraged to become active citizens---it is intolerable to maintain a system that favors one over another in the voting machinery serving our citizens and our leaders, an inconsistency throughout the land that begs for recognition.

California and Ohio(and some 33 other jurisdictions) have figured it out. (Cal.Elections Code Sec. 13111; Ohio Rev.Code sec. 3505.03). We must tell other states who have not done so, to get-on-board with a level playing field.

CONCLUSION

The petition for a writ of certiorari should be granted..

Date: December 27, 2007

Respectfully submitted,

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UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
No. 07-1003

MICHAEL SCHAEFER — Plaintiff-Appellant
versus
LINDA H. LAMONE, Administrator, State Board of ELections — Defendant-Appellee

Appeal from the United States District Court for the District of Maryland at Baltimore.
Benson Everett Legg, Chief District Judge

Submitted: August 22, 2007
Decided September 28, 2007
Before: MICHAEL, TRAXLER and GREGORY
Circuit Judges

Affirmed by unpublished per curiam opinion.

Michael Schaefer appeals the district court's order granting Appellee's motion to dismiss his civil complaint alleging Maryland's Election Law requiring alphabetical listing of candidates' name on ballots violated the Equal Protection Clause. We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the District Court. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

MICHAEL SCHAEFER
Plaintiff
V. Civil No. L-06-896
LINDA H. LAMONE
Defendant

ORDER

For the reasons stated in the Memorandum of even date, the Court hereby:
(i)DENIES Plaintiff's Requests for Judicial Notice
(ii)GRANTS Defendant's Motion to Dismiss
(iii)DENIES Plaintiff's Cross Motion for Summary Judgment as MOOT
(iv)DIRECTS the Clerk's Office to CLOSE the case.

Dated this 30th day of November, 2006

/s/ B.LEGG
Benson Everett Legg
Chief Judge

IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MARYLAND
MICHAEL SCHAEFER
Plaintiff
V.
Civil No. L-06-896
LINDA H. LAMONE
Defendant

MEMORANDUM

Pro se plaintiff Michael Schaefer("Schaefer"), an unsuccessful candidate in the Democratic senatorial primary, alleges that some voters reflectively cast their ballot for the first name on the list.
He, therefore, argues that it is unconstitutional for Maryland to list candidates in alphabetical order. The State must give all candidates an equal chance to capture the so-called "windfall vote", he contends. While Schaefer may be factually accurate, He has not stated a constitutional violation. Accordingly the Court will, in a separate order, GRANT Defendant's Motion to Dismiss and CLOSE the case.

I. Introduction

Section 9-210(j)(3) of the Maryland Election Law directs that "the names of candidate... shall be listed in alphabetical order by surname". ***(1)***. Schaefer contends that a person such as himself, with a name far down the alphabet, has little

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(1) Md. Code Ann., Election Law, section 9-210(j)(3) (2002) chance of gaining what some have termed the "donkey" or "windfall" vote.***(2)***. With respect to the

Democratic primary, Schaefer asserts that the system unfairly advantaged Senator Elect Ben Cardin, whose name headed the list of eighteen senatorial candidates. He seeks a declaratory judgment that section 9-210(j)(3) violates the equal protection clause of the Fourteenth Amendment to the United States Constitution. Defendant Linda Lamone ("Lamone"), the Administrator of the State Board of Elections, has moved to dismiss the case under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim.*(3).*

II. Standard

Ordinarily, a complaint should not be dismissed for failure to state a claim under Rule 12(b)(6) unless it appears beyond all doubt that the plaintiff can prove no set of facts in support of its claim that entitle it to relief. See Conley v. Gibson, 355 U.S. 41, 45-46(1957); Labram v. Havel, 43 F.3d 918,

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(2) See Clough v. Guzzi, 416 F. Supp. 1057, 1063 (D. Mass. 1976)

(3) Lamone also argues that (i)Schaefer lacks standing because he did not register as a candidate until after he filed his amended complaint, and (ii) Schaefer is barred from maintaining this action because he brought a virtually identical suit in state court in 1986. The court need not address these arguments, because Schaefer's claim fails on other grounds. Lamone does not argue that Schaefer's claim is moot by virtue of his loss in the primary. In any event, Schaefer's case is not moot because it is "capable of repetition, yet evading review". See Int'l Org. of Masters, Mates & Pilots, et al. v. Brown, 498

U.S. 466 (1991)
920(4th Cir. 1995). The liberal pleading requirements of Rule 8(a) demand only a "short and plain" statement of the claim. In evaluating such a claim, the Court must accept as true all well-pleaded allegations of fact and view them in the light most favorable to the plaintiff. See Jenkins v. McKeithen, 395 U.S. 411, 421-422(1969). In essence, the legal theory articulated, or even suggested, by the non-moving party must be one that could not be the basis for a ruling in that party's favor.

III. Analysis

At this motion to dismiss stage, the Court will assume the correctness of Schaefer's factual proposition that the first person named on the ballot garners a windfall vote.*(4)* In his amended complaint, Schaefer explicitly alleges an equal protection violation based on an impermissible classification.

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*(4)*Schaefer does not estimate the size of the windfall vote in his amended complaint. In his first motion for summary judgment, which was denied, he asserted that the effect is somewhere between three and fifteen percent in primary elections. Later, however, he requested that the Court take judicial notice of a *New York Times* opinion piece in which the author claimed an effect of two percent. In any event the size of the windfall vote is not germane to the Court's analysis. Schaefer has supplied the Court with other articles about positional bias in elections. The Court construes these submissions as requests for judicial notice as well. It need not

address the merits of these requests, however, because it views the facts in the light most favorable to the plaintiff at this stage of the litigation. Accordingly, Schaefer's motions for judicial notice are DENIED.
In his supplemental briefing, he also appears to claim that the Maryland statue impinges on the Constitution's guarantee of the right to vote.***(5)***. Construing the complaint broadly, the Court will analyze both theories of recovery.

A. Equal Protection

Unless a classification is suspect, it will withstand an equal protection challenge "if there is a rational relationship between the disparity of treatment and some legitimate governmental purpose". Heller v. Doe, 509 U.S. 312, 319-320(1993). Schaefer claims membership in a class of people with alphabetically 'high" surnames. The Court will assume *arguendo* that Schaefer has identified a class. He has not predicated a suspect class, however. A suspect class is one that burdens people based on race, religion, national origin, ancestry, alienage, gender or illegitimacy. See Owens v. Ventura County Superior Court, 42 F. Supp. 2d 993, 998(C.D. 1999). None of these classifications is implicated in Schaefer's suit.

Accordingly, the Court must analyze Schaefer's claim under the rational basis test. The test is highly deferential. A statute "is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a

(5) Pl's Supplemental Briefing in Support of Mot. For Summ. J. and in Opp. To Def. Mot. To Dismiss.

legitimate interest."(6) States and counties have used a variety of criteria to rank candidates. These include listing candidates from "established" political parties before candidates from "new" ones, or listing candidates from parties that received the most votes in the last election before other candidates, or listing incumbents before

*(6)*City of Cleburne v. Cleburne Living Center, 473 U.S. 432, 440(1985). Under rational basis review, "the burden is on the challenging part to negative any reasonable conceivable state of facts that could provide a rational basis for the classification." Board of Trustees of University of Alabama v. Garrett, 531 U.S. 356(2001).

challenges, or listing party candidates before unaffiliated candidates.*(7)* Courts have upheld constitutional challenges to each of these systems. In doing so, they have recognized that ordering systems can facilitate various legitimate interests, such as providing information to voters(in the case of an incumbent-first statute), making the process more convenient for voters, and simplifying vote-counting.*(8)*.

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*(7)*See Board of Election Commissioners of Chicago v. Libertarian Party of Illinois, 591 F2d 22(7th Cir. 1979)(upholding system of listing 'established" political parties before new political parties); Libertarian Party of Colorado v. Buckley, 938 F. Supp. 687(D. Colo. 1996) (upholding system of listing candidates from the two parties receiving the most votes in the last election first); New Alliance Party of New York State Board of Elections, 861 F. Supp. 282(S.D.N.Y. 1994)(upholding system of listing party candidates before independent candidates); Clough, 416 F. Supp. At 1067(upholding system listing incumbents first, followed by other candidates, listed alphabetically); **but see** Akins v. Secretary of State, 904 A2d 702(N.H.2006)(listng candidates from party receiving the most votes in the previousl election and

alphabetizing the names of the remaining candidates violated state constitution), Gould v. Grubb, 536 P2d 1337(Cal. 975) (incumbent-first and alphabetically order listing system violated state and federal constitutions); Kautenburger v. Jackson, 333 P2d 293(Ariz. 1958)(alphabetically order listing system violated state constitution). Courts have, however, struck down systems whereby candidates from one political party were always placed first. See, e.g. Sangmeister . Woodard, 565 F2d 460(7th Cir. 1977(declaring county clerk's practice of placing candidates from his party first on the ballot unconstitutional); Graves v. McElderry, 946 F. Supp. 1569(W.D. Okla. 1996)(striking down Democrat-first statute.)

*(8)*Board of Election Commissioners of Chicago, 591 F.2d at 25-26,; Clough, 416 F. Supp. at 1068.

Some courts have recognized the states have an interest in constructing an orderly ballot and preventing voters confusion *(9)* which is the state interest that Lamone claims here. *(10)* The above-described methods have massed muster because they have a perceptible purpose behind them. An alphabetical system makes it easier for voters to find the candidate of their choice on the ballot. Accordingly, Maryland's statute does not violate the equal protection rights of "high" surname candidates.

B. Right to Vote

As mentioned, Schaefer appears to contend that Maryland's alphabetical order rule interferes with the right to vote. The right to vote is a fundamental right guaranteed b the equal protection clause of the

Fourteenth Amendment*(11)*. Moreover, restrictions on candidates may impose "constitutionally suspect

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(9) Board of Elections Commissioners of Chicago, 591 F2nd at 25-26; New Alliance Party, 861 F. Supp. at 297.

(10). Def.'s Mem. In Support of Mot. To Dismiss.

(11). See Kramer v. Union Free School District 395 U.S. 621, 626(1969); Harper v. Virginia State Board of Elections, 383 U.S. 663(1966).

burdens on voters' rights to associate or to choose among candidates" *(12)*.. Under the "fundamental rights" strand of equal protection analysis, a statute that impinges on a fundamental right is subject to strict scrutiny; it withstands scrutiny if it is necessary to promote a compelling governmental interest*(13)*.

Nonetheless, the supreme court has explicitly recognized that in enacting "comprehensive and sometimes complex election codes" the states will inevitably affect...the individual's right to vote". Anderson v. Celebrezze, 460 U.S. 780, 788(1983). The states, which are responsible for holding elections, have the right to pass laws that regulate candidacy requirements and voting

procedures.*(14)*. They may, therefore, constitutionally impose registration requirements, eligibility requirements, and other rules and restrictions.

Accordingly, in Anderson, the Supreme Court declined to apply the "fundamental rights" strand

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(12). Anderson v. Celebrezze, 460 U.S. 780, 788(1983). Candidacy itself, however, is not a fundamental right. See Bullock v. Carter, 405 U.S. 134, 143(1972)(barriers to a candidate's access to the ballot "[do] not [themselves] compel strict scrutiny"); see also Clements v. Fashing, 457 U.S. 957, 962(1982)(plurality).

(13). Illinois State Board of Elections v. Socialist Workers Party, 440 U.S. 173, 184(1979);

(14). Anderson, 460 U.S. at 788; see also Clements, 457 U.S. at 965-966(plurality)("Not all ballot access restrictions require 'heightened' equal protection scrutiny")

of of equal protection analysis, and instead aid out a balancing test for evaluating the constitutionality of restrictions on voting.*(15)*. A court must first consider the "character and magnitude of the assert injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate. It then must identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule...only after weighting all these factors is the reviewing court in a position to decide whether the challenged provisions is unconstitutional". Id. At 789-90. Under

this test a "severe" burden on constitutional rights is still subject to strict scrutiny. Burdick v. Takushi, 504 U.S. 428, 434(1991). 'But when a state election law imposes only reasonable, nondiscriminatory restrictions upon the
First and Fourteenth Amendment rights of voters, the State's important regulatory interests are generally sufficient to justify the restrictions". Id.

In evaluating election laws, courts look at the burden on broad rights, such as the right to vote

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(15) Id. At 786 n.7

for a chosen candidate and the right to associate for political purposes.*(16)*. Alphabetical listings do not trammel these interests. The Maryland statute does not prevent anyone from voting.*(17)*. Nor does it limit the filed of candidates, thereby keeping voters from selecting their preferred candidate. Schaefer himself was on the primary ballot, and all his partisans had to do to vote for him was find his name on the list, a task made faster and easier by

virtue of alphabetization.
The only detriment Schaefer claims is that some percentage of undecided voters will vote for someone else. There is "no constitutional right to a wholly rational election, based solely on a

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(16) See, e.g. Burdick v. Takushi, 504 U.S.428(1992) (prohibition on write-in candidates puts only a small burden (on) voters rights because it was easy for candidates to be listed on the ballot); **Anderson**, 460 U.S. at 792(early filing deadline for independent Presidential candidates impinges on the rights of independent-minded voters because it kept independent candidates off the ballot); Buckley, 938 F. Supp. At 693-694(system of listing candidates from the two parties receiving the most votes in the last election before other candidates does not exclude candidates from the ballot, prevent parties from attaining major-party status, or prevent voters from casting their ballot for candidates of their choice); New Alliance, 861 F. Supp. At 295(system of listing party candidates before independent candidates does not exclude candidates from the ballot, prevent political parties from making its views known to the public, or prevent voters form cashing their ballot for candidates of their choice).
*(17)*Cf.Harper,383 U.S.at 670(decl.Virginia's poll tax unconstitutional).

reasoned consideration of the issues and the candidates' positions, and free from other 'irrational' considerations". Cough v. Guzzi, 416 F.Supp. 1057, 1067(D. Mass. 1976. Accordingly, Schaefer has not suffered a constitutional harm.*(18)*.

Even assuming that the burden on candidates and voters rises to the level of a constitutional harm, the State's interests outweigh that burden. As discussed above, Lamone contends that the State has an interest in "develop[ing] and order{ing} a manageable ballot to prevent voter confusion".(*19*). The Court agrees that this is a "compelling" interest. See New Alliance Party v. New York State Board of Elections, 861 F. Supp. 282, 295-296 (S.D.N.Y. 1994). "A ballot should not be formatted like a dartboard", id. At 299, but instead should foster voters' ability to chose the candidates of their choice. Listing names alphabetically serves this interest.

IV. Conclusion

States have substantial latitude in regulating elections. Some states have sought to minimize the efforts of the windfall vote by adopting a lottery system, as Schaefer advocates*(20)*,

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(18) See New Alliance, 861 F. Supp at 295
(19) Def.'s Mem. In Support of Mot. To Dismiss
(20) Def.'s Mot. For Summ.J.,

or by rotating the ballot order so that each candidate come first on an equal number of the ballots*(21)*. Perhaps it would be better for Maryland to adopt another system for

listing names on the ballot. This Court, however, does not sit as an election commission or a legislature. Maryland's legislature has decided to list candidates names alphabetically, and this system passes constitutional muster.

For the reasons stated herein, the Court will, by **separate order**:

(i) DENY Plaintiff's Requests for Judicial Notice;
(ii) GRANT Defendant's Motion to Dismiss
(iii)DENY Plaintiff's Cross Motion for Summary Judgment as MOOT
(iv)DIRECT the Clerk's Office to CLOSE the case.

Dated this 30th day of November, 2006

/s/ Benson Legg

Chief Judge Benson Everett Legg

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(21) See, e.g. Cal. Elec. Code sec. 13111(2006); Ohio Rev. Code Sec. 3505.03(2006)